IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 811 of 1986

For Approval and Signature:

HONOURABLE MR.JUSTICE C.K.BUCH
HONOURABLE MR.JUSTICE SHARAD D.DAVE

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

STATE OF GUJARAT - Appellant(s)
Versus
PATEL CHELABHAI RAMSUNDAR & 2 - Opponent(s)

==========

Appearance :
MR KC SHAH, APP for Appellant(s) : 1,
MR BN PATEL for Opponent(s) : 1 - 2.
None for Opponent(s) : 3,

==========

CORAM : HONOURABLE MR.JUSTICE C.K.BUCH

and

HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 13/09/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE SHARAD D.DAVE)

1. This is an appeal filed by the appellant State under Section 378 of the Code of Criminal Procedure, 1973 challenging the judgment and order dated 29.3.1986 passed by the learned Additional Sessions Judge, Banaskantha at Palanpur in Sessions Case No.52 of 1985 whereby the learned Additional Sessions Judge had acquitted all three accused for the offences punishable under Sections 302, 34 and 114 of Indian Penal Code and Section 37(1) read with Section 135 of the Bombay Police Act.

2. The short facts giving rise to this appeal are such that :

2.1 Bai Radha who is the wife of the deceased Hardev Bhanji gave complaint to P.S.I.Shri Nankbhai Dharjiya to the effect that on 23.5.85, she along with her husband Hardev Bhanji and father-in-law Bhanji Shamji went to their field at about 7.00 a.m., and she was feeding the cattle and her husband and father-in-law were smoking bidi sitting near the well. At about 9.30 a.m., her husband went to answer the call of nature and after some time the complainant, on hearing the shouts of her husband, ran towards the place and saw that the accused no.1 was having dharia in his hand and accused no.2 was having a stick in his hand and both were beating her husband. Thereafter, she along with her father-in-law went near her husband and saw that her husband had

sustained severe injuries on his head and he succumbed to the injuries immediately. Thereafter, she filed complaint in Shihori police station. The Investigating Officer prepared the panchanama of scene of offence, inquest panchanama etc., and ultimately on the investigation being over, the charge sheet was filed against the accused in the Court of learned Judicial Magistrate, Shihori.

3. As the offences charged were exclusively triable by the Court of Sessions, the learned Judicial Magistrate, First Class, Shihori committed the case to the Court of Sessions, Banaskantha at Palanpur.

4. The learned Additional Sessions Judge, Banaskantha at Palanpur framed the charge against the accused and after recording the evidence and hearing the learned counsel for both the sides, acquitted all the three accused of the offences punishable under Sections 302, 34 and 114 of Indian Penal Code and Section 37(1) read with Section 135 of the Bombay Police Act, against which the present appeal is filed.

5. Heard Mr.K.C.Shah, learned APP for the appellant – State and Mr.B.N.Patel, learned advocate for the respondents – accused.

6. Mr.K.C.Shah, learned APP has taken through the relevant part of the judgment and oral as well as

documentary evidence led during the course of trial.

7. The learned trial Judge has recorded that the complaint is filed late as the incident has taken place, according to the complainant, at 9.30 a.m., and the complaint is filed at about 4.00 p.m. For this purpose, he has discussed the oral evidence of the complainant – wife of the deceased and came to the conclusion that if she went to file the complaint as per her say, then, looking to the distance between the place of incident and the police station, the complaint would have been filed at about 1.00 to 2.00 p.m., in the afternoon. But, in this case, the complaint is filed at about 4.00 p.m. Therefore, it can be said that the complaint filed was an afterthought.

8. The learned trial Judge has also discussed the oral evidence of the doctor wherein the doctor has stated that the deceased must have taken food prior to 8 to 10 hours of the death and that 100 ml., urine was found in the bladder and therefore, the deceased might have gone to sleep after passing urine and that his death might have occurred either in the night or in the early morning. Therefore, the learned Judge came to the conclusion that the benefit of doubt should go in favour of the accused.

9. Further, the learned Judge has also discussed that the complainant herself in her deposition has stated that prior to 7-8 years of this

incident, her husband and her father-in-law had a scuffle with the elder brother of the accused nos.1 and 2 and in that scuffle the elder brother of the accused nos.1 and 2 was killed. That case was tried by the Palanpur Court against the deceased and his father and they were acquitted. Against the same, appeal was filed in the High Court and the deceased was convicted for life. Thereafter, in the appeal filed before the Supreme Court against the said judgment, the deceased was released on bail and during that period, the present incident had occurred. The learned Judge, after appreciating this evidence and the fact of this complaint being filed late, has come to the conclusion that the complainant keeping this vengeance in mind must have filed the complaint against the accused nos.1 and 2 as an afterthought. Further, the learned Judge has also discussed that the name of accused no.3 is not disclosed in the complaint by the complainant, however, he was arrested on his name being given by the father-in-law of the complainant at a later point of time. Therefore, considering all these aspects, the learned Judge came to the conclusion that there is nothing on record to involve these accused in the crime in question, and, therefore, acquitted the accused.

10. In view of the above, we do not find any perversity or illegality in the findings. It is now settled that when the appellate forum is in agreement with the reasons assigned by the lower court, then it

is not necessary to rewrite those reasons. There is no scope of reappreciation of the evidence unless the Appellate Court finds perversity in the finding as well as gross error in appreciation of the evidence.

11. In view of the aforesaid discussion, we do not find any substance in this appeal and, therefore, the same is dismissed.

(C.K.Buch,J)

(Sharad D.Dave,J)

srilatha